

\*\*E-Filed 8/27/2008\*\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HORTA, LLC,

Plaintiff,

v.

CITY OF SAN JOSE,

Defendant.

Case Number C 02-04086 JF

ORDER<sup>1</sup> REGARDING OBJECTIONS  
TO EVIDENCE

In connection with Horta's pending motion for attorney's fees, filed November 13, 2007, both parties both filed objections to and moved to strike various parts of the other party's evidence. This order sets forth the Court's rulings as to these objections.

**I. Horta's Objections**

**A. Objections to Joseph M. Quinn ("Quinn") Declaration**

Objection to Quinn Declaration, ¶¶ 1-8

Horta contends that Quinn lacks the expertise upon which to base an opinion as to the costs of complex federal cases. Quinn's experience in the California legal market, which includes

<sup>1</sup> This disposition is not designated for publication in the official reports.

several positions in large private law firms, makes his testimony helpful to the trier of fact.

OVERRULED.

Objection to Quinn Declaration, ¶ 10 - General

Horta contends that Quinn's description of the complaint and the claims it asserted is inaccurate and is contradicted by the actual language of the First Amended Complaint. Quinn's summary of general allegations of the complaint and the claims asserted therein is reasonably accurate. OVERRULED.

Objection to Quinn Declaration, ¶ 10 - "the Airport Director denied Horta's application under the new ordinance."

Horta contends that Quinn has not demonstrated personal knowledge of the basis upon which the City denied Horta's request for authorization. F.R.E. 703 does not require the opinion or inference of an expert to be based upon personal knowledge. Moreover, the objection goes to the weight rather than the admissibility of the opinion. OVERRULED.

Objection to Quinn Declaration, ¶ 10 - "Horta sued the City of San Jose setting out four claims. . ."

Horta contends that Quinn's statements are irrelevant, misstate the record and contain inadmissible legal conclusions. OVERRULED.

Objection to Quinn Declaration, ¶ 10 - "The district court granted relief as to Horta's claim that section X(B)(2) application should have been decided under the standards of the former noise program and that Horta was entitled to a section X(B)(2) exemption under the former noise program."

Horta contends that Quinn's statements are irrelevant, misstate the record and contain inadmissible legal conclusions. SUSTAINED.

Objection to Quinn Declaration, ¶ 11 - General

Horta contends that Quinn's statements misstate the record and contain inadmissible legal conclusions. SUSTAINED.

Objection to Quinn Declaration, ¶ 12 - General

Horta contends that Quinn's statements misstate the record and contain inadmissible legal

1 conclusions. SUSTAINED.

2 Objection to Quinn Declaration, ¶ 14-17- General

3 Horta contends that Quinn's statements are irrelevant, lack foundation and are  
4 speculative. Quinn fails to offer any factual basis for his assertion that Horta's course of action  
5 was unreasonable or that his suggested alternative would have been preferable. SUSTAINED.

6 Objection to Quinn Declaration, ¶ 18 - General

7 Horta contends that Quinn's statements lack foundation. SUSTAINED.

8 Objection to Quinn Declaration, ¶ 19 - "I approach all legal fees audits with the  
9 assumption that most attorneys do not intentionally or unintentionally inflate their bills,  
10 and there must be a "preponderance of the evidence" to support an audit finding that a  
11 certain amount of fees should be disallowed. In this regard, I also believe that attorneys  
12 should be given the benefit of the doubt where possible overbilling may have occurred."

13 Horta contends that the statement at issue is irrelevant, speculative, misstates the record,  
14 and contains inadmissible legal conclusions. OVERRULED.

15 Objection to Quinn Declaration, ¶ 19 - "... Horta could readily have obtained a judgment  
16 on its writ claim (the claim on which Horta in fact ultimately obtained the judgment) . . ."

17 Horta contends that the statement at issue is speculative, misstates the record, and  
18 contains inadmissible legal conclusions. Quinn mischaracterizes the claims asserted by Horta  
19 and the judgment Horta obtained by insisting that Horta asserted a "writ claim" and that Horta  
20 obtained a judgment only on that claim. SUSTAINED.

21 Objection to Quinn Declaration, ¶ 20 - "Horta's lawsuit, however, was not particularly  
22 complex and did not reasonably require the resources of a large firm."

23 Horta contends that the statement at issue is irrelevant, speculative, lacks foundation and  
24 constitutes an improper expert opinion. F.R.E. 703 does not require the opinion or inference of  
25 an expert to be based on the expert's personal knowledge. In addition, Quinn has sufficient  
26 expertise, and there was sufficient foundation for his opinions per F.R.E. 705. OVERRULED.

27 Objection to Quinn Declaration, ¶¶ 21-27 - General

28 Horta contends that Quinn's statements are irrelevant, speculative and lack foundation.

1 F.R.E. 703 does not require the opinion or inference of an expert to be based upon personal  
 2 knowledge. Quinn's testimony here as to reasonable hourly rates and attorney's fees in general is  
 3 relevant and that he has sufficiently provided a basis for his opinion on these matters.

4 OVERRULED.

5 Objection to Quinn Declaration, ¶¶ 28-35 - General

6 Horta contends that Quinn's statements are irrelevant, speculative and lack foundation.  
 7 F.R.E. 703 does not require the opinion or inference of an expert to be based upon personal  
 8 knowledge. Quinn's testimony on reasonable rates and attorney's fees in general is relevant and  
 9 rests upon a sufficient factual basis. OVERRULED.

10 Objection to Quinn Declaration, ¶¶ 36-37 - General

11 Horta contends that Quinn's statements are irrelevant, speculative and lack foundation.  
 12 F.R.E. 703 does not require the opinion or inference of an expert to be based upon personal  
 13 knowledge. Quinn's declaration as to Mr. Wainscoat's duties does not contradict Quinn's other  
 14 testimony, nor is Quinn's opinion as to attorney staffing outside the scope of his expertise.  
 15 OVERRULED.

16 Objection to Quinn Declaration, ¶ 38 - General

17 Horta contends that Quinn's statement is irrelevant. SUSTAINED.

18 **B. Objections to Joseph M. Quinn ("Quinn") Supplemental Declaration**

19 Objection to Quinn Supplemental Declaration, ¶¶ 4-9

20 Horta contends that Quinn lacks the expertise with respect to the opinions at issue. This  
 21 objection is addressed above. OVERRULED.

22 Objection to Quinn Supplemental Declaration, ¶ 10 - General

23 Horta contends that Quinn's statements are irrelevant. SUSTAINED.

24 Objection to Quinn Supplemental Declaration, ¶¶ 11-12 - General

25 Horta contends that Quinn's statements are irrelevant. SUSTAINED.

26 Objection to Quinn Supplemental Declaration, ¶ 12 - "...it makes is easier for the  
 27 opposing party and the court to evaluate the reasonableness of the staffing decisions and time  
 28 spent on particular tasks."

1 \_\_\_\_\_ Horta contends that Quinn’s statement is irrelevant, speculative and contains an  
2 inadmissible legal conclusion. The statement is irrelevant. SUSTAINED.

3 Objection to Quinn Supplemental Declaration, ¶ 13 - General

4 Horta contends that Quinn’s statement is irrelevant, speculative and lacks foundation.  
5 SUSTAINED.

6 Objection to Quinn Supplemental Declaration, ¶ 14 - General

7 Horta contends that Quinn’s statement is irrelevant, speculative and lacks foundation.  
8 Even if “conventional wisdom” suggests that cases filed in state court cost less than those filed in  
9 federal court, Quinn does not address Horta’s reasons for filing this particular case in federal  
10 court. Consequentially, the statement does not tend to prove or disprove any material fact in this  
11 case and thus is irrelevant. SUSTAINED.

12 Objection to Quinn Supplemental Declaration, ¶ 14 - “Conventional wisdom suggests  
13 that litigation costs are lower in state court.”

14 Horta contends that Quinn’s statement is irrelevant, speculative, lacks foundation and  
15 contains an unqualified expert opinion. The statement is irrelevant. SUSTAINED.

16 Objection to Quinn Supplemental Declaration, ¶ 15 - General

17 Horta contends that Quinn’s statement is irrelevant, speculative, lacks foundation and  
18 contains an unqualified expert opinion. The statement is speculative. SUSTAINED.

19 Objection to Quinn Supplemental Declaration, ¶ 15 - “Nothing about this case suggests  
20 that it could not have been adequately litigated in state court.”

21 Horta contends that Quinn’s statement is irrelevant, speculative and lacks foundation.  
22 The statement is speculative. SUSTAINED.

23 Objection to Quinn Supplemental Declaration, ¶ 15 - “And if given the option, a  
24 reasonable cost-sensitive client would likely elect to litigate in state court, unless a  
25 strategic consideration other than cost outweighed the cost issue.”

26 Horta contends that Quinn’s statement is irrelevant, and contains both an unqualified  
27 expert opinion and an inadmissible legal conclusion. OVERRULED.

28 Objection to Quinn Supplemental Declaration, ¶ 15 - “In my opinion, a party to whom

1 attorney's fees are shifted should not have to bear the burden of expenses incurred based  
2 on the other side's strategic considerations when a more economical approach was  
3 available."

4 Horta contends that Quinn's statement is irrelevant, and contains both an unqualified  
5 expert opinion and an inadmissible legal conclusion. The statement contains a legal conclusion.  
6 SUSTAINED.

7 Objection to Quinn Supplemental Declaration, ¶ 16 - General

8 Horta contends that Quinn's statement is irrelevant, speculative and lacks proper  
9 foundation. OVERRULED.

10 Objection to Quinn Supplemental Declaration, ¶ 16 - "Many of those cases involved  
11 airport and land-use issues."

12 Horta contends that Quinn's statement is irrelevant, misstates the record and contains  
13 inadmissible legal opinions and arguments. OVERRULED.

14 Objection to Quinn Supplemental Declaration, ¶ 16 - "Staffing a case with four attorneys  
15 typically occurred because of attorney attrition..."

16 Horta contends that Quinn's statement is irrelevant, speculative and that it lacks  
17 foundation. The statement is irrelevant. SUSTAINED.

18 Objection to Quinn Supplemental Declaration, ¶ 17 - General

19 Horta contends that Quinn's statements are irrelevant, speculative and lack foundation.  
20 F.R.E. 703 does not require that the opinion or inferences of an expert be based upon personal  
21 knowledge. Quinn's general hypothetical situations may help to prove or disprove a material fact  
22 in this case. OVERRULED.

23 Objection to Quinn Supplemental Declaration, ¶ 18 - General

24 Horta contends that Quinn's statements are irrelevant, speculative and lack foundation.  
25 F.R.E. 703 does not require that the opinion or inferences of an expert be based upon personal  
26 knowledge. OVERRULED.

27 Objection to Quinn Supplemental Declaration, ¶ 18 - "The case was moderately complex  
28 but did not merit the time of nine attorneys and two firms. The airport and aviation issues

presented prior to judgment were relatively straightforward, as were the land issues.”

Horta contends that Quinn’s statements are irrelevant, speculative, lack foundation and present an improper expert opinion. F.R.E. 703 does not require that the opinion or inferences of an expert be based upon personal knowledge. OVERRULED.

Objection to Quinn Supplemental Declaration, ¶ 18 - “I would expect litigators who command \$400 per hour could have reasonably handled the case...”

Horta contends that Quinn’s statements are irrelevant, speculative and lack foundation. F.R.E. 703 does not require that the opinion or inferences of an expert be based upon personal knowledge. OVERRULED.

Objection to Quinn Supplemental Declaration, ¶ 19 - General

Horta contends that Quinn’s statements are irrelevant, speculative and lack foundation. F.R.E. 703 does not require that the opinion or inferences of an expert be based upon personal knowledge. OVERRULED.

## II. Defendant’s Objections

### A. Objections to Boyd S. Lemon (“Lemon”) Declaration

Objection to Lemon Declaration, ¶¶ 1, 2, 4-9, 12, 13

The City contends that Lemon lacks expertise upon which to base an opinion regarding aviation litigation. Lemon’s lengthy experience in the California legal market, including cases in involving administrative law, makes his testimony helpful to the trier of fact. OVERRULED.

DATED: August 17, 2008

  
JEREMY FOGEL  
United States District Judge

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